[redacted] #4

U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FILE: [redacted] Office: Vermont Service Center Date: DEC 08 2002

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(9)(A)(iii)

IN BEHALF OF APPLICANT: Self-represented

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who alleges to have resided unlawfully in the United States for more than 15 years having entered the United States unlawfully in 1986. On September 30, 1998, the applicant attempted to procure admission into the United by presenting a fraudulent Form I-551 (Resident Alien Card). He was found to be inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud. He was removed from the United States on October 1, 1998, under the provisions of section 235(b)(1) of the Act, 8 U.S.C. 1225(b)(1). Therefore, the applicant is inadmissible under section 212(a)(9)(A)(i)(I) of the Act, 8 U.S.C. 1182(a)(9)(A)(i)(I), for having attempted to procure admission into the United States by fraud and for having been removed from the United States.

Based on the applicant's statements in the record on July 9, 2001, that he had been residing in the United States for more than 15 years and he went to Mexico in 1998 and again in 2000 due to a family emergency, it can be concluded that the applicant was present in the United States again without a lawful admission or parole shortly after his removal in October 1, 1998, and without permission to reapply for admission in violation of section 276 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1326 (a felony).

On March 22, 2000, the applicant attempted to procure admission into the United States by presenting a counterfeit Temporary Evidence of Lawful Admission for Permanent Residence stamp. The applicant was found to be inadmissible again under section 212(a)(6)(C)(ii) of the Act, and he was removed again on March 23, 2000. He reentered the United States unlawfully shortly thereafter.

The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. 1182(a)(9)(A)(iii), to be able to support his U.S. citizen daughter born in February 1997.

The director determined that the unfavorable factors outweighed the favorable ones and denied the application accordingly.

On appeal, the applicant states that he has been living in the United States for a long time. He states the he returned to Mexico the first time to see his mother who had major surgery. He states that he returned the second time because she had a relapse. The applicant states that he has nothing in Mexico and he would expose his family to extreme hardship if he returned.

Section 212(a)(9)(A) of the Act provides that:

(i) Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Clauses (i)...shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

Section 212(a)(9)(C) of the Act provides that-

(i) Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

Section 212(a)(6)(B) of the Act, 8 U.S.C. 1182(a)(6)(B), and section 212(a)(9)(C) of the Act were amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and section 212(a)(6)(B) of the Act is now codified as section 212(a)(9)(A)(i) and (ii). According to the reasoning in Matter of Soriano, 21 I&N Dec. 516 (BIA 1996; A.G. 1997), the provisions of any legislation modifying the Act must normally be applied to waiver applications adjudicated on or after the enactment date of that legislation, unless other instructions are provided. IIRIRA became effective on September 30, 1996.

Pursuant to section 212(a)(9)(C) of the Act, aliens who were unlawfully present in the United States for an aggregate period of more than one year and subsequently departed or who were previously ordered removed (and actually left the United States) and have subsequently either entered the United States without inspection or

sought to enter the United States without inspection are permanently inadmissible.

No period of unlawful presence in the United States prior to April 1, 1997, is considered for purposes of applying section 212(a)(9)(C)(i)(I) of the Act. Therefore, only those aliens entering or attempting to enter the United States without being admitted on or after April 1, 1998, following an aggregate period of unlawful presence of 1 year or more are inadmissible under section 212(a)(9)(C)(i)(I) of the Act.

An alien inadmissible under section 212(a)(9)(C)(i)(I) is permanently inadmissible but may seek consent to reapply for admission after he/she has been outside the United States for 10 years.

An alien inadmissible under section 212(a)(9)(C)(i)(II) is permanently inadmissible but may seek consent to reapply for admission after he/she has been outside the United States for 10 years. The alien may have been placed in removal proceedings before or after April 1, 1997, but the unlawful reentry must have occurred on or after April 1, 1997.

The record reflects that the applicant was removed on October 1, 1998, seeking entry by fraud on September 30, 1998, after having been unlawfully present in the United States since at least April 1, 1997. The applicant reentered the United States without being admitted shortly thereafter, remained unlawfully in the United States, departed to Mexico in 2000, attempted to procure admission again by fraud on March 22, 2000, was removed again and unlawfully reentered again.

Absent evidence to the contrary, the record reflects that the applicant has been unlawfully present in the United States for more than 1 year after being removed from the United States. He attempted to procure admission again after being removed the first time, and he procured admission after being removed the second time and after April 1, 1997. The applicant is, therefore, mandatorily inadmissible because 10 years have not elapsed since his last departure. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.